



3225-F0

COUNCIL ON ENVIRONMENTAL QUALITY

Emergencies and the National Environmental Policy Act Guidance

AGENCY: Council on Environmental Quality (CEQ).

ACTION: Notice.

SUMMARY: On September 14, 2020, the Council on Environmental Quality (CEQ) issued guidance, CEQ-NEPA-2020-01, in a memorandum to the heads of Federal departments and agencies (agencies) to assist agencies with compliance with the National Environmental Policy Act (NEPA) during emergencies. The CEQ regulations implementing NEPA provide for alternative arrangements during emergencies when an agency's action is likely to have significant effects and would require preparation of an environmental impact statement. This guidance also addresses compliance with NEPA when the action is unlikely to have significant effects and might require preparation of an environmental assessment or application of a categorical exclusion.

DATES: This guidance is effective on September 14, 2020.

FOR FURTHER INFORMATION CONTACT: Thomas Sharp, Principal Deputy Associate Director for NEPA, 202-395-5750, Thomas.L.Sharp2@ceq.eop.gov.

SUPPLEMENTAL INFORMATION:

Guidance No. CEQ-NEPA-2020-01

MEMORANDUM FOR HEADS OF FEDERAL DEPARTMENTS AND AGENCIES

FROM: Mary B. Neumayr, Chairman

SUBJECT: Emergencies and the National Environmental Policy Act Guidance

This guidance¹ updates and replaces previous guidance from the Council on Environmental Quality (CEQ) on the environmental review of proposed emergency response actions under the National Environmental Policy Act, 42 U.S.C. 4321–4347 (NEPA).² Federal departments and agencies (agencies) should distribute this guidance as part of their general guidance on emergency actions to agency offices that are or may become involved in developing and taking actions in response to emergencies.

As agencies respond to situations involving immediate threats to human health or safety, or immediate threats to valuable natural resources, they must consider whether there is sufficient time to follow the procedures for environmental review established in the CEQ National Environmental Policy Act Implementing Regulations, 40 CFR parts 1500–1508 (CEQ NEPA regulations),³ and their agency NEPA procedures.

This guidance does not establish new requirements. CEQ established the regulation addressing alternative arrangements in emergency circumstances in 1978,⁴ and amended it in 2020 to clarify that it provides for alternative arrangements for compliance with NEPA section 102(2)(C) (42 U.S.C. 4332(C)).⁵ 40 CFR 1506.12. CEQ has approved, and agencies have applied successfully, numerous alternative arrangements to allow a wide range of proposed actions in emergency circumstances including natural disasters, catastrophic wildfires, threats to species and their habitat, economic crisis,

¹ The contents of this guidance do not have the force and effect of law and are not meant to bind the public in any way. This memorandum is intended only to provide clarity to the public regarding existing requirements under the law or agency policies.

² This guidance replaces guidance issued by CEQ on September 29, 2016, May 12, 2010, and September 8, 2005. CEQ rescinds the prior guidance.

³ <https://ceq.doe.gov/laws-regulations/regulations.html>.

⁴ 43 FR 55977, Nov. 29, 1978.

⁵ 85 FR 43304, July 16, 2020.

infectious disease outbreaks, potential dam failures, and insect infestations.⁶

Attachment 1 provides agencies with a step-by-step process for determining the appropriate path forward for the NEPA environmental review of all actions proposed in response to an emergency situation.

Environmental Impact Statements:

The CEQ regulations, at 40 CFR 1506.12, provide for alternative arrangements for NEPA compliance in emergency situations when the agency proposal has the potential for significant environmental impacts and would require an environmental impact statement (EIS) if the situation were not an emergency:

Where emergency circumstances make it necessary to take an action with significant environmental impact without observing the provisions of the regulations in [parts 1500–1508], the Federal agency taking the action should consult with the Council about alternative arrangements for compliance with section 102(2)(C) of NEPA. Agencies and the Council will limit such arrangements to actions necessary to control the immediate impacts of the emergency. Other actions remain subject to NEPA review.

Agencies develop these alternative arrangements, based on emergency-specific facts and circumstances, during consultation with CEQ. The alternative arrangements developed by an agency address the actions necessary to respond immediately to the impacts of an emergency. The long-term response to the emergency, including recovery actions, remains subject to the regular NEPA process set forth in the CEQ NEPA regulations.

⁶ A synopsis of previous alternative arrangements is available at https://ceq.doe.gov/nepa-practice/alternative_arrangements.html.

Alternative arrangements do not waive the requirement to comply with the statute, but establish an alternative means for NEPA compliance. Alternative arrangements also do not complete or alter other environmental requirements (except as provided by other environmental statutes or regulations); however, engaging other resource and regulatory agencies about other environmental requirements during development and implementation of alternative arrangements can facilitate meeting other compliance requirements. Final agency action taken pursuant to alternative arrangements for compliance with NEPA under 40 CFR 1506.12 may be subject to judicial review if a statute, such as the Administrative Procedure Act, provides for such review.

Attachment 1 describes the factors for an agency to address when requesting and designing alternative arrangements. Once the agency develops the alternative arrangements, CEQ will provide documentation detailing the alternative arrangements and the considerations on which they are based.

Environmental Assessments:

When agencies are considering proposals with less than significant impacts or are uncertain about the significance of impacts, the agency can prepare a concise, focused environmental assessment (EA). Attachment 2 of this memorandum provides guidance for preparing an EA. Some agency NEPA procedures provide processes for preparing EAs for emergency actions.⁷ Agencies must continue their efforts to notify and inform

⁷ See Agency NEPA procedures, for example: Department of Homeland Security Instruction Manual 023-01-001-01, Revision 01 at VI-1, https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf; U.S. Forest Service, 36 CFR 220.4(b), http://www.fs.fed.us/emc/nepa/nepa_procedures/includes/fr_nepa_procedures_2008_07_24.pdf; and Department of the Interior, 43 CFR 46.150, https://www.ecfr.gov/cgi-bin/retrieveECFR?gp=&SID=2a2ce144c79da6f3e773bfa9cdf17bcf&mc=true&n=sp43.1.46.b&r=SUBPART&ty=HTML#se43.1.46_1150.

the affected public and relevant Federal, State, Tribal, and local agency representatives of the Federal agency activities and proposed actions. Agencies must comply with the CEQ NEPA regulatory requirements for content, interagency coordination, and public involvement to the extent practicable.⁸

ATTACHMENT 1

Emergency Actions Under the National Environmental Policy Act (NEPA)

In the case of an emergency:

1. Do not delay immediate actions necessary to secure lives and safety of citizens or to protect valuable resources. Consult with CEQ as soon as feasible. Please coordinate any communications with your Federal agency NEPA contacts. *See* <https://ceq.doe.gov/nepa-practice/agency-nepa-contacts.html>.
2. Determine if NEPA applies and the appropriate level of NEPA analysis:
 - Determine if a Federal agency is taking the proposed action (e.g., city or State action does not trigger NEPA; Federal decisions to fund city or State action may trigger NEPA, depending on the nature of the funding arrangements) or is exempt from NEPA (e.g., certain Federal Emergency Management Agency response actions under the Stafford Act are statutorily exempt from NEPA; additional information is available at https://www.fema.gov/media-library-data/20130726-1748-25045-1063/stafford_act_nepa_fact_sheet_072409.pdf).
 - If the Federal agency's proposed emergency response activity is not statutorily exempt from NEPA, and the agency has a categorical exclusion

⁸ 40 CFR 1501.5, 1501.6, and 1506.6 (these regulations address required content and public involvement for preparing EAs and Findings of No Significant Impact).

(CE) that includes that type of activity, then apply the CE unless there are extraordinary circumstances that indicate using the CE in this particular case is not appropriate. Agency NEPA personnel can assist in identifying agency-specific actions that are categorically excluded.

- If the proposed Federal agency emergency response activity is not statutorily exempt from NEPA, a CE is not available, and the agency does not expect the potential environmental impacts of the proposed response activity to be significant, then an environmental assessment (EA) is appropriate. Prepare a focused, concise EA as described in Attachment 2. Alternative arrangements, as outlined at 40 CFR 1506.12, do not apply because the environmental impacts are not expected to be significant. Agency NEPA personnel can assist in identifying agency-specific actions that typically require an EA.
- If the proposed Federal emergency response activity is not statutorily exempt from NEPA, and the agency expects it would have significant environmental impacts, the agency should determine whether an existing NEPA analysis covers the activity (e.g., implementing pre-existing spill response plans). If so, the agency may rely upon its existing analysis or adopt the analysis of another agency consistent with 40 CFR 1506.3.
- If the proposed Federal emergency response activity is not statutorily exempt from NEPA, the agency expects it to have significant environmental impacts, and an existing NEPA analysis does not cover the activity, then the agency should consult with CEQ to determine whether

alternative arrangements can take the place of an EIS. Contact CEQ to develop alternative arrangements under 40 CFR 1506.12. CEQ's main phone number is (202) 395-5750.

3. Factors to address when requesting and designing alternative arrangements include the:

- Nature and scope of the emergency;
- Actions necessary to control the immediate impacts of the emergency;
- Potential adverse effects of the proposed action;
- Components of the NEPA process that the agency can follow and provide value to decision making (e.g., coordination with affected agencies and the public);
- Duration of the emergency; and
- Potential mitigation measures.

ATTACHMENT 2

Preparing Focused, Concise and Timely Environmental Assessments

An agency can prepare a concise and focused EA in a short time in those situations where:

- There is no statutory exemption from NEPA requirements;
- There is no CE available, either because the agency has none that cover the activity or there are extraordinary circumstances;
- An existing NEPA analysis (EA or EIS) does not cover the proposed recovery or response actions; and
- The environmental impacts of the proposed recovery or response actions are not

likely to be significant.

The following outline with notations addresses the core elements of an EA as required by 40 CFR 1501.5:

- The purpose and need for the proposed action;
- Alternatives as required by NEPA section 102(2)(E);
- The description of environmental impacts of the proposed action and the alternatives; and
- The list of agencies and persons consulted.

Purpose and Need for the Proposed Action

The agency should briefly describe information that substantiates the purpose and need for the action and incorporate by reference information that is reasonably available to the public. For example, “This agency is preparing to erect a temporary emergency response facility to replace facilities disrupted or destroyed by the [hurricane/flooding/contamination/etc.] to facilitate rescue or relief efforts in an effort to [minimize further adverse health conditions/restore communications/restore power].”

The agency should briefly describe the existing conditions and the projected future conditions of the area impacted by the action. For example, “The area(s) in which the temporary facility will be located or relocated is identified in the attached map. This area consists of [add brief description of the environmental state of the area that will be affected by the location and operation of the facility, focusing on those areas that are potentially sensitive. The goal is to show that environmental effects have been considered and the facts found indicate no significant impact (for example, refueling sites are not on top of aquifers, nesting areas, graves, sacred sites, etc.). These are examples to

show the utility of and need to identify actual place-based environmental issues rather than compiling lists of environmental resources not at issue].”

Proposed Action and Alternatives

The agency should list and briefly describe its proposed action and reasonable alternatives that meet the purpose and need. The agency must use its discretion to ensure the number and range of reasonable alternatives is reasoned and not arbitrary or capricious. The purpose and need for the proposed action and its environmental impacts should focus the alternatives. For example, the need to use existing infrastructure necessary to support the facility is a reasoned basis for focusing on a discrete number of alternatives.

When there is no conflict over the resource effects of the proposed action based on input from interested parties, the agency can consider the proposed action and proceed without consideration of additional alternatives. Otherwise, the agency must identify reasonable alternatives that meet the action’s purpose and need, consistent with section 102(2)(E) of NEPA.

Environmental Impacts of the Proposed Action and Alternatives

The agency should describe the environmental impacts of its proposed action and each alternative. The description should provide enough information to support a determination to either prepare an EIS or a finding of no significant impact.

The agency should focus on whether the action would significantly affect the quality of the human environment. The agency should follow CEQ’s NEPA regulations in considering whether the effects of a proposed action are significant. 40 CFR 1501.3. Agency NEPA contacts and contacts at resource agencies can assist in this effort.

Tailor the length of the discussion to the complexity of each issue. Focus on those human and natural environment issues where impacts are a concern. Telephone or email discussions with State, Tribal, and local governments and agencies, and other Federal agencies that operate in the area, will help focus those issues.

The agency must discuss the impacts of each alternative and may discuss those impacts together in a comparative description, or discuss each alternative separately. The agency should use the approach that will be most effective in the time available. The agency may contrast the impacts of the proposed action and alternatives with the current condition and expected future condition in the absence of the action. This constitutes consideration of a no action alternative as well as demonstrating the need for the action.

The agency should incorporate by reference data, inventories, other information, and analyses relied on in the EA. CEQ encourages the use of hyperlinks in web-based documents. This information must be reasonably available to the public. For example, include relevant existing programmatic agreements and generally accepted best management practices.

The agency should be clear and concise about its conclusions and their bases.

List of Agencies and Persons Consulted

The agency must involve the public, relevant agencies, and any applicants, to the extent practicable in preparing EAs, and list the agencies and persons consulted. For example, include the people, offices, and agencies that the agency coordinated with to ensure that the location of the action did not cause unintentionally an adverse impact. Also include information about individuals consulted to comply with substantive environmental requirements and regulations, for example: the Clean Water Act, the

National Historic Preservation Act, and the Endangered Species Act (ESA). [Note that the ESA emergency provisions at 50 CFR 402.05 may be applicable to the proposed action.]

Authority: 42 U.S.C. 4321–4347; 42 U.S.C. 4371–4375.

Mary B. Neumayr,

Chairman.

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